

FILED
IN CLERKS OFFICE
2005 FEB 29 P 12:16
05 10392 JLT
DISTRICT OF MASSACHUSETTS
DISTRICT COURT
DISTRICT OF MASSACHUSETTS

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

RODNEY BUSTILLO
Petitioner

VS.

**THOMAS RIDGE, Secretary of the U.S.
Department of Homeland Security**
Respondent

RECEIPT # _____
AMOUNT \$ 5.00
SUMMONS ISSUED N/A
LOCAL RULE 4.1 -
WAIVER FORM -
MCF ISSUED -
BY DPTY. CLK. M.P.
DATE 3/1/05

PETITION FOR WRIT OF HABEAS CORPUS - § 2241

PARTIES

MAGISTRATE JUDGE MBB

1. Petitioner, Rodney Bustillo is currently being detained in the United States pending imminent deportation to his native Honduras at the behest of the U.S. Dept. of Immigration and Naturalization, (INS). He is being held presently at the Suffolk County Detention Center in Boston, MA.

2. Respondent, Thomas Ridge is the Secretary of the Dept. of Homeland Security and, as such, is the proper respondent to the within action.

JURISDICTION

3. This court has jurisdiction over this matter pursuant to 28 U.S.C. Sec. 2241. (Also, please see Calcano-Martinez v. INS, 533 U.S. 348 (2001).

BACKGROUND AND TRAVEL

4. The INS sought to deport petitioner based upon five criminal convictions he incurred in the State of Rhode Island, one for delivery of cocaine together, with four convictions for simple and/or domestic assault.
5. Following initial deportation proceedings, petitioner filed a Special Motion to Re-open in the U.S. Immigration Court pursuant to Sec. 212(c) of the Immigration and Nationality Act. Immigration Judge Patricia M.B. Sheppard granted the petition, thus saving Bustillo from deportation.

6. The aforementioned ruling by the Immigration Court was subsequently appealed to the Bureau of Immigration Appeals, (BIA), by the Dept. of Homeland Security. The BIA, having determined that the lower court abused its discretion in favor of petitioner, issued a final order of deportation against him.
7. Following the issuance of the BIA's final order, petitioner filed another Motion to Reopen together with a Motion to Stay Deportation. The Motion to Reopen was denied, although the Motion for Stay remains pending in the Immigration Court.
8. In October 2004 Albert DiRobbio, Chief Justice of the R.I. District Court, vacated petitioner's one year sentence on xxx, substituting it with one of less than 360 days-the threshold held by the INS. All other convictions were either set aside or vacated to level below the standard set forth by INS.
9. Bustillo is facing imminent deportation and is, in fact, scheduled to be flown to Louisiana on date certain. He requests that this Court issue habeas Corpus relief to Review this urgent matter before this Court.

CLAIM FOR RELIEF

Bustillo respectfully requests that this Court issue Habeas Corpus Relief and Present him for appropriate review of this matter pending Deportation.

Date: 3/1/05

For Petitioner,

Rei M. B.
33 Power Rd
Pawtucket, RI
02860

CERTIFICATION

A copy of the within matter was provided to all appropriate parties of interest on the 1 day of March, 2005.

Rei M. B.

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Rodney Bustillo

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

Providence
RI

(c) Attorney's (Firm Name, Address, and Telephone Number)

Kevin McBurney
83 Paper Rd
Providence, RI401-
475-5935

DEFENDANTS

Department of Homeland
Security
2005 FEB 29 P 12:16

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

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II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff☐ 3 Federal Question
(U.S. Government Not a Party)☒ 2 U.S. Government Defendant☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State

PTF DEF
☐ 1 ☐ 1Incorporated or Principal Place
of Business In This StatePTF DEF
☐ 4 ☐ 4

Citizen of Another State

☐ 2 ☐ 2Incorporated and Principal Place
of Business In Another State☐ 5 ☐ 5Citizen or Subject of a
Foreign Country☐ 3 ☐ 3

Foreign Nation

☐ 6 ☐ 6

IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT

- ☐ 110 Insurance
☐ 120 Marine
☐ 130 Miller Act
☐ 140 Negotiable Instrument
☐ 150 Recovery of Overpayment & Enforcement of Judgment
☐ 151 Medicare Act
☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
☐ 153 Recovery of Overpayment of Veteran's Benefits
☐ 160 Stockholders' Suits
☐ 190 Other Contract
☐ 195 Contract Product Liability
☐ 196 Franchise

TORTS

PERSONAL INJURY

- ☐ 310 Airplane
☐ 315 Airplane Product Liability
☐ 320 Assault, Libel & Slander
☐ 330 Federal Employers' Liability
☐ 340 Marine
☐ 345 Marine Product Liability
☐ 350 Motor Vehicle
☐ 355 Motor Vehicle Product Liability
☐ 360 Other Personal Injury

PERSONAL INJURY

- ☐ 362 Personal Injury - Med. Malpractice
☐ 365 Personal Injury - Product Liability
☐ 368 Asbestos Personal Injury Product Liability
☐ 370 Other Fraud
☐ 371 Truth in Lending
☐ 380 Other Personal Property Damage
☐ 385 Property Damage Product Liability

PRISONER PETITIONS

- ☐ 510 Motions to Vacate Sentence
☒ 530 General Habeas Corpus
☐ 535 Death Penalty
☐ 540 Mandamus & Other
☐ 550 Civil Rights
☐ 555 Prison Condition

FORFEITURE/PENALTY

- ☐ 610 Agriculture
☐ 620 Other Food & Drug
☐ 625 Drug Related Seizure of Property 21 USC 881
☐ 630 Liquor Laws
☐ 640 R.R. & Truck
☐ 650 Airline Regs.
☐ 660 Occupational Safety/Health
☐ 690 Other

LABOR

- ☐ 710 Fair Labor Standards Act
☐ 720 Labor/Mgmt. Relations
☐ 730 Labor/Mgmt. Reporting & Disclosure Act
☐ 740 Railway Labor Act
☐ 790 Other Labor Litigation
☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY

- ☐ 422 Appeal 28 USC 158
☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS

- ☐ 820 Copyrights
☐ 830 Patent
☐ 840 Trademark

SOCIAL SECURITY

- ☐ 861 HIA (1395ff)
☐ 862 Black Lung (923)
☐ 863 DIWC/DIWW (405(g))
☐ 864 SSID Title XVI
☐ 865 RSI (405(g))

FEDERAL TAX SUITS

- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES

- ☐ 400 State Reapportionment
☐ 410 Antitrust
☐ 430 Banks and Banking
☐ 450 Commerce
☒ 460 Deportation
☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 480 Consumer Credit
☐ 490 Cable/Sat TV
☐ 810 Selective Service
☐ 850 Securities/Commodities/Exchange
☐ 875 Customer Challenge 12 USC 3410
☐ 890 Other Statutory Actions
☐ 891 Agricultural Acts
☐ 892 Economic Stabilization Act
☐ 893 Environmental Matters
☐ 894 Energy Allocation Act
☐ 895 Freedom of Information Act
☐ 900 Appeal of Fee Determination Under Equal Access to Justice
☐ 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

☒ 1 Original Proceeding☐ 2 Removed from State Court☐ 3 Remanded from Appellate Court☐ 4 Reinstated or Reopened☐ 5 Transferred from another district (specify)☐ 6 Multidistrict Litigation☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity)

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

3/1/05

SIGNATURE OF ATTORNEY OF RECORD

Kevin McBurney

Kevin McBurney

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY)

Rodrigo Bustillo vs
Department of Homeland Security ERKS OFFICE

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT. U.S. DISTRICT COURT
- II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. DISTRICT OF MASS. Also complete AO 120 or AO 121 for patent, trademark or copyright cases.
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ✓ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

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3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES

NO

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)

YES

NO

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES

NO

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?

YES

NO

7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).

YES

NO

A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?

EASTERN DIVISION

CENTRAL DIVISION

WESTERN DIVISION

B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?

EASTERN DIVISION

CENTRAL DIVISION

WESTERN DIVISION

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME

Kevin McBurney

ADDRESS

33 Power Rd.

Pawtucket RI 02860

TELEPHONE NO.